

APPEAL NO. 030256
FILED MARCH 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 15, 2003. The hearing officer resolved the disputed issues by determining that the appellant's (claimant) compensable injury of _____, does not include any injury to the neck, and that he does not have disability resulting from the compensable injury of _____, from September 16, 2002, through the date of the CCH. The claimant appealed and the respondent (carrier) responded.

DECISION

Affirmed.

The issues of whether the compensable injury included an injury to the claimant's neck and whether the claimant had disability as a result of his compensable injury from September 16, 2002, through the date of the CCH were fact questions for the hearing officer to resolve from the evidence presented. The claimant had the burden of proof on both disputed issues. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Section 401.011(16) defines disability as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." Maximum medical improvement (MMI) is defined in Section 401.011(30). Although the designated doctor did not find that the claimant had reached MMI when he evaluated the claimant in October 2002, that does not compel a determination that the claimant had disability for the disputed time period, because disability and MMI have different definitions under the 1989 Act. Although there is conflicting evidence on the disputed issues, we conclude that the hearing officer's determinations on the disputed issues are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge